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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,371	04/02/2004	Matthias Loeffler	2003DE417	2598

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CLARIANT CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
4000 MONROE ROAD
CHARLOTTE, NC 28205

EXAMINER

BERNSHTEYN, MICHAEL

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 12/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/817,371

Applicant(s)

LOEFFLER ET AL.

Examiner

Michael Bernshteyn

Art Unit

1713

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-8 and 10-16.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


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Continuation of 11. NOTE: Applicants contend that claim 1 is directed to the process for preparation of concentrates in liquid or liquid-disperse form. In stark contrast, Loffer et al. (U.S. Patent 6,437,068) is directed to a water-soluble or water swellable crosslinked copolymer. That is, the prior art does not teach, disclose or suggest element B), "adding a higher-boiling solvent, or solvent mixture, one or more emulsifiers and mixtures thereof to the mixture of polymer and polymerization medium, where the boiling point of the higher-boiling solvent or solvent mixture is at least 10C higher than that of the polymerization medium used for the polymerization", of amended claim 1. Furthermore, the prior art does not provide the motivation, necessary for an obviousness rejection under 103(a). (page 7, 2nd paragraph).

It is noted that in previous Office Action dated March 8, 2006, the detailed answer for this argument was done.

Loffer fully discloses the limitations of claim 1 (step III b), concerning adding of a higher-boiling solvent or solvent mixture and one or more emulsifiers to the mixture of polymer and polymerization medium, and to the limitations of claims 15 and 16, because most of the species in the prior art are correspondingly exactly the same as in instant claims 15 and 16. The only difference concerns the used terminology: the prior art is silent about a higher-boiling solvent and named these species as oil substances.

It is worth to mention that according to the limitations of step III b in claim 1, the adding of a higher-boiling solvent or solvent mixture and one or more emulsifiers to the mixture of polymer and polymerization medium is the next step after the formation of polymer of high molecular weight. Practically it can be done when the reflux condenser is replaced by a distillation bridge (compare specification, example A, pages 11-12, [0034] and US'287, Example 1, page 3, [0024] and Examples 1-40/W cream, pages 4-5, [0042-0060]).

Therefore, in view of substantially identical method of free radical polymerization between Loffer and instant claims, and it is used the same initiators, crosslinkers, emulsifiers, solvents (tert-butanol), temperatures, duration, etc. as instantly claimed, and comprises the identical chemical ingredients, as discussed above, and it is used for the same purposes for cosmetic, pharmaceutical and dermatological oil-in-water emulsion compositions, it is the examiner position that Loffer's process does not necessarily differ from the claimed process.

Therefore the rejection under 35 USC 103(a) cannot be withdrawn and remains in force.